



Federal Communications Commission  
Washington, D.C. 20554

August 4, 2005

DA 05-2242  
***In Reply Refer to:***  
1800B3-DT

David A. O'Connor, Esq.  
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2099 Pennsylvania Ave., N.W., Suite 100  
Washington, D.C. 20006

In Re: Application for New LPFM Station,  
Yakima, WA  
Calvary Chapel of Yakima  
File No. BNPL-20010614AJQ  
Facility ID No. 135089

Petition for Reconsideration

Dear Mr. O'Connor:

This letter refers to the captioned application of Calvary Chapel of Yakima ("CCY") for a new Low Power FM ("LPFM") station in Yakima, Washington. CCY filed its application on June 14, 2000. National Lawyers Guild Center on Democratic Communications, Microradio Implementation Project, and Prometheus Radio Project ("Lawyers Guild") filed an informal objection against CCY's application on September 21, 2001. On March 16, 2004, the Bureau dismissed CCY's application as inadvertently accepted for filing, and dismissed the Lawyers Guild objection as moot.<sup>1</sup> On April 13, 2004, CCY filed a Petition for Reconsideration. For the reasons set forth below, we reinstate CCY's application, reinstate and deny the Lawyers Guild objection, and grant CCY's application.

### Background

CCY and other Calvary Chapel applicants located around the country participated in the first round of the LPFM filing windows. The first LPFM filing windows permitted only local applicants to apply for new LPFM stations and limited each non-governmental applicant to a single application filing.<sup>2</sup> Item 4 requires an applicant to certify that it **either** (1) is an educational institution or organization that is physically headquartered within 16.1 kilometers (10 miles) of the proposed transmitter site; (2) is an educational institution or organization with seventy-five percent (75%) of its board members residing within 16.1 kilometers from the transmitter site; or (3) proposes a public safety radio service and has jurisdiction within the service area of the proposed LPFM station. Item 5(a) requires an applicant to certify that "No party to this application has an attributable interest in any non-LPFM station, including any full power AM or FM station, FM translator station, full or low power television station, or any other media subject to the Commission's ownership restrictions." There are exceptions to this ownership

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<sup>1</sup> *Letter to Listed Applicants*, Reference 1800B3-GDG/SW (MB Mar. 16, 2004) ("*Mar. 16 Letter*"). By the same letter a number of other applications, all filed by other Calvary Chapel applicants, were also dismissed.

<sup>2</sup> See 47 C.F.R. § 73.853(b). See also FCC Form 318, Section II, Items 4 and 5, and Instructions for FCC Form 318 at 6.

restriction for “local chapters” of a national or other large organization set forth in the attribution provisions of Section 73.858 of the Commission’s rules.<sup>3</sup> The Instructions for FCC Form 318 summarize these exceptions as follows:

Under this provision a local chapter of a national organization will not have the attributable media interests of the national organization attributed to it, provided that the local chapter: (1) is incorporated in its local area separately from the national organization with which it is affiliated; **and** (2) has a distinct local presence and mission. To satisfy the second element of this standard, an applicant must demonstrate that it has significant membership within its local area and that it has a local purpose that can be distinguished from the purpose of the national organization with which it is affiliated.<sup>4</sup>

Each of the Calvary Chapel-named applicants, including CCY, submitted information to establish that it qualified for the “local chapter” exemption, certifying its local presence and submitting an exhibit to demonstrate a distinct local purpose. In dismissing the applications, the staff stated that it is undisputed that each applicant is separately incorporated and that it has a headquarters within the proposed broadcast community. However, the staff found that the submitted statements of educational purpose failed to distinguish the applicant from the other Calvary Chapel applicants which filed very similar applications for LPFM stations, or from national Calvary Chapel radio companies such as CSN International and Calvary Chapel of Twin Falls that own numerous full-service and FM translator radio stations throughout the country.<sup>5</sup> Nothing in the educational purpose of the applications referenced the respective communities of license in any way or demonstrated “a local purpose that can be distinguished from the purpose of the national organization with which it is affiliated.” Without this evidence, the staff could not find that the purported “local chapter” had a distinct local presence and mission. Accordingly, the staff determined, pursuant to Section 73.853(b) and 73.858 of the Commission’s rules, that the applications were patently defective and the applications, including that of CCY, were dismissed as inadvertently accepted for filing. The informal objections that were filed against these applications were dismissed as moot.<sup>6</sup> On April 13, 2004, CCY filed its Petition for Reconsideration.

## Discussion

*Petition for Reconsideration.* In its Petition for Reconsideration, CCY argues that the Letter Decision incorrectly assumes that CCY “is part of a national organization, in which all affiliates or local chapters share the name ‘Calvary Chapel.’”<sup>7</sup> CCY claims that it is not affiliated with any other Calvary Chapel organization.<sup>8</sup> Because it is not affiliated with Calvary Chapel, CCY argues, its application

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<sup>3</sup> 47 C.F.R. § 73.858, “Attribution of LPFM Station Interests.”

<sup>4</sup> Instructions for FCC Form 318, pp. 5-6.

<sup>5</sup> See, e.g., <http://www.csnradio.com>.

<sup>6</sup> Informal objections against several of these applications filed by Lawyers Guild alleged that they did not demonstrate a “distinct local presence and mission,” and therefore, they do not fall under the exceptions to the ownership restrictions pursuant to Section 73.858 of the Commission’s rules. These objections were dismissed as moot in the letters dismissing the applications.

<sup>7</sup> *CCY Petition for Reconsideration* (“*CCY Petition*”) at 1.

<sup>8</sup> *Id.* at 1-2. In support of this assertion, CCY attaches to its Petition three letters. The first letter, from Pastor Tony Magana, President of CCY, declares that CCY has “no financial or ownership ties to any other organization” and that “there is no controlling entity that has legal or financial authority over CCY[.]” *CCY Petition*, Exhibit 1. The second letter, from Pastor Michael Kestler, President of Calvary Chapel Twin Falls (“CCTF”) and Vice President of

should be analyzed “under the criteria set forth in Section 73.853 of the rules, under which CCY qualifies as an LPFM applicant.”<sup>9</sup> Nevertheless, CCY contends, if it is considered an affiliate it qualifies for the attribution exemption under Section 73.858(b) because it was separately incorporated and has a distinct local presence and mission in its proposed community of license. In support of this contention, CCY provided a Revised Statement of Educational Purpose that details its relationship with Yakima, Washington, and outlines the proposed educational purpose of its LPFM station.<sup>10</sup> For all these reasons, CCY argues, the Commission should reinstate its application.<sup>11</sup> In a footnote, CCY notes that its name has changed to “Calvary Chapel Yakima Valley” since its application was filed, and that it inadvertently failed to inform the Commission of this fact.<sup>12</sup> In light of this failure CCY requests, to the extent necessary, a waiver of Section 1.65(a) of the Commission’s rules.<sup>13</sup>

CCY formally and voluntarily identifies itself with the Calvary Chapel organization and has submitted an application substantially identical to those of other Calvary Chapel applicants. While these facts are highly probative on the issue of whether CCY should be treated as a “local chapter” of Calvary Chapel, we need not resolve that matter here. We agree with CCY that even if it is considered a local chapter of a “national” Calvary Chapel organization, it qualifies for the attribution exemption of Section 73.858(b) in that the Revised Statement demonstrates that CCY has a distinct local presence and mission in Yakima. According to this Revised Statement, CCY provides Yakima with a variety of programs and activities including a food and clothing bank, free concerts, a pregnancy center, and free food distribution. Thus, we find that CCY has demonstrated a “distinct local presence and mission” within Yakima and is therefore eligible to become an LPFM station licensee.<sup>14</sup> For this reason, we grant CCY’s Petition for Reconsideration. Because CCY’s application is mutually exclusive with other applications for new LPFM stations, it will be considered according to the selection criteria provided in Section 73.872 of the Commission’s rules.<sup>15</sup> Furthermore, as CCY’s change in legal name is a minor change and is not of decisional significance, we grant a waiver of Section 1.65(a) of the Commission’s rules in this limited case and instruct CCY to amend its application within thirty (30) days.<sup>16</sup>

*Lawyers Guild Informal Objection.* Reinstatement of CCY’s application requires us to consider the Lawyers Guild’s September 27, 2001, Informal Objection, and we reinstate the Informal Objection for

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CSN International, declares that “neither CCTF nor CSN has any legal partnership or control over any of the applicants cited in the letter.” *CCY Petition*, Exhibit 2 at 1. The third letter, from Pastor Chuck Smith, Senior Pastor at Calvary Chapel Costa Mesa, Inc., who started the first “Calvary Chapel” thirty years ago, declares that other Calvary Chapel churches “operate totally and separate [sic] from any relationship to us, as they minister to their local community” and explains that “the name ‘Calvary Chapel’ would merely be used to refer to a style of ministry and teaching alone, for the sake of clarity....” *CCY Petition*, Exhibit 3 at 1, 2.

<sup>9</sup> *Id.* at 2. See notes 3 and 4, *supra*, and accompanying text.

<sup>10</sup> *Educational Program; Calvary Chapel of Yakima* (filed April 15, 2004) (“*Revised Statement*”).

<sup>11</sup> *CCY Petition* at 6.

<sup>12</sup> *Id.* at 1.

<sup>13</sup> *Id.*; 47 C.F.R. § 1.65(a).

<sup>14</sup> As stated above, it is undisputed that CCY was separately incorporated within Yakima.

<sup>15</sup> 47 C.F.R. § 73.872.

<sup>16</sup> See 47 C.F.R. § 73.871(c)(4).

this purpose.<sup>17</sup> The Objection, however, deals with the identical issue for which the CCY application was dismissed. Because this issue was adequately addressed on reconsideration, the objection requires no further discussion and will be denied below.

### **Conclusion/Actions**

Accordingly, Calvary Chapel of Yakima's Petition for Reconsideration IS GRANTED, and its application for a new LPFM station IS REINSTATED, and a waiver of Section 1.65(a) of the Commission's rules IS GRANTED to the extent indicated above. The Informal Objection of the Lawyers Guild IS REINSTATED and IS DENIED.

Sincerely

Peter H. Doyle, Chief  
Audio Division  
Media Bureau

cc: Calvary Chapel of Yakima  
National Lawyers Guild Center on Democratic Communications

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<sup>17</sup> In its informal objection, the Lawyers Guild argues that CCY "fails to satisfactorily establish that it has a distinct local mission that can be distinguished from the purpose of the national Calvary Chapel." *Lawyers Guild Informal Objection* at 4. To support this allegation, the Lawyers Guild references portions of CCY's statement of educational purpose, which it claims is "nearly word-for-word identical to the generic form Exhibits submitted" by various other Calvary Chapel applicants. *Id.* Therefore, the Lawyers Guild argues, CCY should not be granted a license for a new LPFM station because, unless CCY establishes its distinct local purpose, "it must be considered an affiliate of the National Calvary Chapel under the Commission's attribution rules." *Id.* at 5. If considered an affiliate, the Lawyers Guild argues, CCY would hold attributable interests in numerous LPFM, full service, and translator stations, and the grant of an LPFM license would violate Sections 73.855 and 73.860(a) of the Commission's rules. *Id.* at 5-6.